

**AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 25TH DAY OF JANUARY 2011, AT 7:00 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.**

**A. CALL TO ORDER**

**B. ROLL CALL**

Mary K. Jones, Chairman, Berkeley District  
Bruce C. Goodson, Vice Chair, Roberts District  
James G. Kennedy, Stonehouse District  
James O. Icenhour, Jr., Powhatan District  
John J. McGlennon, Jamestown District

Robert C. Middaugh, County Administrator  
Leo P. Rogers, County Attorney

**C. PLEDGE OF ALLEGIANCE** – Alexander Christie, a ninth-grade student at Walsingham Academy, led the Board and citizens in the Pledge of Allegiance.

**D. PUBLIC COMMENT**

1. Mr. Jay Everson, 103 Branscome Boulevard, commented on increased revenues that would result from Virginia Retirement System (VRS) contribution changes. He commented on revenues from Business, Professional, and Occupational License (BPOL) taxes and penalties. He stated that the County should repeal BPOL and replace the revenue with the VRS savings.

2. Mr. Ed Oyer, 139 Indian Circle, commented on repayment of VRS contributions that were deferred; home foreclosures in the County and property assessments; objection to abstentions to the vote for the Board's Chairmanship; and limitations on expenditures.

3. Mr. Jack Fowler, 109 Wilderness Lane, commented on artificial additives and chemicals in potentially healthy blueberries. He stated his objection to abstentions to the vote for the Board's Chairmanship.

**E. BOARD REQUESTS AND DIRECTIVES**

Mr. Kennedy commented on issues from the Chamber and business people in relation to extremely delayed mail service. He requested that the Board send a letter to the Postmaster General requesting investigation into this matter.

Mr. McGlennon stated that at the last meeting he requested action on a resolution related to the proposed stoplight on Jamestown Road. He stated that a resolution has been prepared, but that he would request to address it at the Board's next meeting.

Ms. Jones noted that since the Board's last meeting, the Budget Retreat was held and the budget process would continue based on those discussions. She stated that she attended a Regional Issues Committee (RIC) meeting earlier today and discussed the synchronization of the regional Comprehensive Plan. She stated that the Board should address some appointments to Boards and Commissions.

Mr. Goodson made a motion to reappoint Ms. Lara Overy to a three-year term on the RIC.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

#### **F. CONSENT CALENDAR**

Mr. Goodson asked to pull Item No. 5 due to a potential conflict. He made a motion to adopt Item Nos. 1-4.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

1. Minutes –
  - a. January 3, 2011, Organizational Meeting
  - b. January 11, 2011, Regular Meeting
2. Dedication of Streets in Stonehouse Glen, Sections 1 and 2 and Fieldstone Parkway Extension

### **RESOLUTION**

#### **DEDICATION OF STREETS IN STONEHOUSE GLEN SECTIONS 1 AND 2**

#### **AND FIELDSTONE PARKWAY EXTENSION**

WHEREAS, the streets described on the attached AM-4.3, fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Residency Administrator for the Virginia Department of Transportation advised the Board that the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 1, 1994, for comprehensive stormwater detention which applies to this request for addition; and

WHEREAS, the County and the Virginia Department of Transportation entered into an agreement on July 15, 2010, for inspection and maintenance of a County controlled grade separation structure which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described in the attached Additions Form AM-4.3 to the secondary system of State highways, pursuant to §33.1-229 of the Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described and any necessary easements for cuts, fills, and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Residency Administrator for the Virginia Department of Transportation.

3. Appropriation of Grant Award - Kiwanis Club of Williamsburg - \$300

**RESOLUTION**

**GRANT AWARD - KIWANIS CLUB OF WILLIAMSBURG - \$300**

WHEREAS, the James City County Fire Department has been awarded a grant for \$300 from the Kiwanis Club of Williamsburg; and

WHEREAS, the funds are to be used for the purchase of File of Life document holders which may be placed on refrigerators or in purses or vehicles to make important medical information accessible in an emergency; and

WHEREAS, the grant requires no match.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and authorizes the following budget appropriation to the Special Projects/Grants fund:

Revenue:

Kiwanis FY11-Fire-File of Life	<u>\$300</u>
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Expenditure:

Kiwanis FY11-Fire-File of Life	<u>\$300</u>
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4. Appropriation of Grant Award - Virginia Department of Fire Programs - \$4,174

**RESOLUTION**

**GRANT AWARD - VIRGINIA DEPARTMENT OF FIRE PROGRAMS - \$4,174**

WHEREAS, the James City County Fire Department has been awarded a grant for \$4,174 (\$3,339 grant, \$835 local match) from the Virginia Department of Fire Programs (VD FP) under the Virginia Fire Services Board (VFSB) Training Mini Grant program; and

WHEREAS, the funds are to be used to upgrade the Department's Fire Studio training simulation software program and purchase a dedicated laptop to allow for in-station training; and

WHEREAS, the grant includes a local match of \$835, which is available in the Fire Department's General Fund budget.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the acceptance of this grant and the following budget appropriation to the Special Projects/Grants fund:

Revenues:

VDFP FY11-Fire-Training Mini Grant	\$3,339
Transfer from General Fund	<u>835</u>
Total	<u>\$4,174</u>

Expenditure:

VDFP FY11-Fire-Training Mini Grant	<u>\$4,174</u>
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5. Contract Award - Chickahominy Riverfront Park (CRP) Recreational Vehicle (RV) Loop Renovations - \$363,000

Mr. McGlennon made a motion to adopt Item No. 5.

On a roll call vote, the vote was: AYE: Kennedy, McGlennon, Icenhour, Jones (4). NAY: (0). ABSTAIN: Goodson (1).

**RESOLUTION**

**CONTRACT AWARD – CHICKAHOMINY RIVERFRONT PARK, RECREATIONAL VEHICLE**

**(RV) LOOP RENOVATIONS – \$363,000**

WHEREAS, improvements have been planned for the recreational vehicle loop renovations at Chickahominy Riverfront Park as part of the “Shaping Our Shores” master plan; and

WHEREAS, the funds are available from the Parks and Recreation Bond Referendum accounts; and

WHEREAS, ten bids were considered for award and Henry S. Branscome, LLC was the lowest responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract in the amount of \$363,000 for the Chickahominy Riverfront Park, RV Loop Renovations to Henry S. Branscome LLC.

## **G. PUBLIC HEARINGS**

Ms. Jones recognized Planning Commissioner Mike Maddocks in attendance.

1. Case No. SUP-0027-2010. Jamestown High School Auxiliary Gymnasium (continued from January 11, 2011)

Mr. Luke Vinciguerra, Planner, stated that Mr. Alan Robertson of Williamsburg-James City County (WJCC) Public Schools has applied for a Special Use Permit (SUP) to allow for the construction of an approximately 6,500-square-foot auxiliary gymnasium at Jamestown High School. The school did not require an SUP when it was originally constructed; however, the school site was rezoned to Public Land in 2007, where schools are a specially permitted use. Though the school is a legally nonconforming use, an SUP is required for any expansion. This SUP would bring the entire school into conformance with the Zoning Ordinance and permit the construction of the proposed gymnasium.

Mr. Icenhour asked Mr. John McDonald, Manager of Financial and Management Services, for his comments on the possibility of the gym to be built without borrowing funds.

Mr. McDonald stated that the Auxiliary Gym was funded assuming a debt issue in FY 2010. He stated that the item was deferred and since returned. He stated that staff is looking at options to fund the project from cash balances that exist in other school capital projects that may help avoid incurring debt. He stated that there was discussion within the schools to use those funds from school construction for additions to the two middle schools and would be resolved in the next 60 days. He stated it was possible to fund the project from cash balances and additional State sales tax generated this year, but there was no guarantee at this point.

Mr. Goodson stated that the Board would consider this as part of the full budget.

Mr. McDonald stated that the Board would have to take action on any type of borrowing.

Mr. Goodson stated this was purely a land use decision at this time.

Mr. McDonald stated that was correct and noted that the budget decision would come back before the Board.

Mr. Icenhour asked if this project was part of this year's Capital Improvements Plan (CIP).

Mr. McDonald stated the project was approved as part of last year's CIP, but it assumed financing for the project. He stated that the Board still had that decision to make.

Mr. Icenhour asked if this would only return to the Board if financing was necessary.

Mr. McDonald stated that the Board could request that it come back either way.

Mr. Goodson stated that cash funding would be a change to the CIP.

Mr. McDonald stated that was correct.

Ms. Jones opened the Public Hearing.

1. Mr. Ed Oyer, 139 Indian Circle, stated that he opposed removing the gym from the original project.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Goodson made a motion to adopt the resolution.

Mr. Icenhour commented that he did not wish to incur debt to complete this project. He made a motion to approve the land use case contingent upon the current capital budget and asked for guidance from Mr. Rogers.

Mr. Rogers stated that the Board should make this motion independently.

Mr. Goodson deferred his motion to allow Mr. Icenhour to make his motion.

Mr. Icenhour made a motion to fund this project from cash reserves and not to incur debt to fund the project.

Ms. Jones stated this was a land use case, and if the project was not fulfilled within the time frame, it would need to return to the Board.

Mr. Rogers stated that was correct.

Ms. Jones stated that the allocation of funding was not part of the land use case.

Mr. Goodson stated that he could not support the motion from Mr. Icenhour because he did not have enough information at this time.

Mr. McGlennon stated that he supported the idea that the project be funded without incurring debt, but no construction could take place without taking action at this time.

Ms. Jones stated the allocation of funding would be decided at a later date.

Mr. Icenhour withdrew his motion.

Mr. Goodson made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **RESOLUTION**

### **CASE NO. SUP-0027-2010. JAMESTOWN HIGH SCHOOL AUXILIARY GYM**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, the applicant has requested an SUP to allow an auxiliary gymnasium at Jamestown High School, located at 3751 John Tyler Highway, and further identified as James City County Real Estate Tax Map No. 4610100002d; and

WHEREAS, the Board of Supervisors, following a public hearing is of the opinion that an SUP to allow for the addition of an auxiliary gymnasium at Jamestown High school and to bring the existing school into conformance with the Zoning Ordinance should be approved.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP No. 0027-2010 as described herein with the following conditions:

1. Gymnasium: This SUP shall be valid for the existing public school, associated fields, trails, parking areas, accessory uses, and the construction of an auxiliary gym located at 3751 John Tyler Highway and further identified as James City County Real Estate Tax Map No. 4610100002d. The auxiliary gymnasium shall be developed generally as shown on the exhibit drawn by MSA, PC entitled "Exhibit of Auxiliary Gymnasium Addition at Jamestown High School" and dated October 20, 2010, with only minor changes and/or additions that do not change the basic concept or character of the development as determined by the Planning Director.
2. Architecture: The auxiliary gymnasium and future additions/exterior renovations shall be consistent with the current façade color, building materials, and architectural style as determined by the Planning Director. Architectural deviations may be approved by the Planning Director. Appeals of the Planning Director's decisions regarding architectural consistency shall be heard by the Development Review Committee (DRC).
3. Water Conservation: The Williamsburg-James City County School Board shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority (the "JCSA") prior to final site plan approval. The standards shall include, but shall not be limited to, such water conservation measures as limitations on the installation and use of irrigation systems and irrigation wells, the use of approved landscaping materials including the use of drought resistant native and other adopted low water use landscaping materials and warm season turf where appropriate, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.
4. Commencement of Construction: If construction has not commenced on this project within thirty-six (36) months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.
5. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

2. Case No. SUP-0026-2010. Tractor Supply Company, Norge Center (continued from January 11, 2011)

Ms. Sarah Propst, Planner, stated that Mr. Kenneth Beuley of TKC CL, LLC has applied for an SUP to allow the construction of a 19,000-square-foot farm supply store with approximately 21,200 square feet of outdoor sales and display areas. An SUP is required in accordance with Section 24-11 of the Zoning Ordinance to allow a commercial building over 10,000 square feet and also per Section 24-391 to allow vehicle and trailer sales.

Staff found the proposed farm supply store to be consistent with surrounding land uses.

At its meeting on December 1, 2010, the Planning Commission approved the parking waiver request and recommended approval of this SUP request by a vote of 7-0.

Staff recommended approval of SUP-0026-2010 with the conditions listed in the resolution.

Mr. McGlennon raised questions related to parking at the site of this project and asked how the validity of the parking requirements was determined.

Ms. Propst stated that staff consulted other localities where the store was located. She indicated that there were no parking issues at any of the other sites.

Mr. McGlennon thanked staff for addressing his questions.

Mr. Icenhour asked about the Comprehensive Plan designation for Community Commercial. He asked about the largest structure that has been built in an area in this designation.

Mr. Allen Murphy, Administrator, Zoning/Planning, stated that the Lightfoot Outlet Mall may fit that description.

Mr. Icenhour asked for follow-up information.

Ms. Jones opened the Public Hearing.

1. Ms. Wendy Fulton, on behalf of the applicant, gave an overview of the Tractor Supply Company operations.

2. Mr. Ed Oyer, 139 Indian Circle, stated his support of the competition that this new business would bring to the County.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to adopt the resolution.

Mr. Icenhour stated his discomfort with the level of impervious cover and stormwater issues as a result of this project. He commented that he wanted a more thorough discussion about the project's impervious cover.

Mr. Murphy stated that following Mr. Icenhour's request, the Environmental office verified the numbers indicated. He stated that the information was on the plan sheet in the package.

Mr. Goodson stated that this was determined by the engineer.

Mr. Murphy stated this was a conceptual plan rather than a fully engineered plan, but there was a calculation for impervious cover.

Mr. Goodson confirmed that an engineer must provide accurate information.

Mr. Murphy stated that was correct.



Mr. Icenhour noted that with the development of Premium Outlets, the impervious cover was indicated as 60 percent but was actually 68 percent. He stated that staff should verify this. He commented on the inadequacies of the parking ordinance and requested additional review of this during the Zoning Ordinance update. He commented on the Community Commercial designation that previously required the total area to be no more than 2,000 square feet. He stated that now, the designation discourages single structures larger than 2,000 square feet. He stated that he was unaware of this during the Comprehensive Plan process. He stated his support for the application.

Ms. Jones noted that the Comprehensive Plan update process was extensive and transparent.

Mr. Kennedy stated that this information was part of the Comprehensive Plan that was submitted for review.

Mr. Icenhour stated that this was a substantial plan that was overtly highlighted during the approval process. He highlighted it for the benefit of the community. He stated that he did not feel it applied to the community.

Mr. Kennedy asked how large the new Pottery structures would be.

Mr. Middaugh estimated that it was roughly 130,000 square feet for three buildings.

Mr. McGlennon stated that he understood there would be a memorandum added to the case file that indicated how staff gathered information and the determination for the special circumstances of the case to serve as a reference in the future. He stated that should Tractor Supply Company move to another location, there may be parking issues. He stated that should new uses or new occupants take over the space, the owner should be in compliance with the Parking ordinance.

Mr. Goodson stated that he was comfortable with the application because part of the outdoor equipment storage area would be paved, which would allow subsequent tenants to create additional parking without additional pavement.

Mr. McGlennon stated that he assumes the applicant would not use the space in a similar manner, such as a hardware store. He stated it would be important to note that it would not be permissible; the applicant would need to satisfy the parking and impervious cover requirements. He stated that there should be a mechanism for new tenants to be aware when making exceptions such as this.

Mr. Kennedy stated that he viewed the Gloucester facility and it was very different from the current businesses in the County. He stated that he felt it was more like a Lowe's store. He stated that his constituents were very happy with the prospect of the new store and competition for these types of businesses. He noted that he felt that it would be complementary to the area. He stated that Lowe's looked at this site, but it was not conducive due to other constraints. He stated concern about the parking in this area. He stated that he would like to have seen more green design on this project and a green building ordinance during the zoning ordinance update process.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **RESOLUTION**

### **CASE NO. SUP-0026-2010. TRACTOR SUPPLY COMPANY, NORGE CENTER**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Kenneth Beuley has applied on behalf of TKC CL, LLC for an SUP to allow for the construction of a retail farm supply store with vehicle and trailer sales on approximately 3.41 acres zoned B-1, General Business, with proffers; and

WHEREAS, the proposed development is shown on a plan prepared by AES Consulting Engineers, dated September 20, 2010, (the "Master Plan") and entitled "Tractor Supply Company 19,000 S.F. Retail Norge Center"; and

WHEREAS, the property is located at 7508 Richmond Road and can be further identified as James City County Real Estate Tax Map Parcel No. 2320100071 (the "Property"); and

WHEREAS, the Planning Commission, following its public hearing on December 1, 2010, voted 7-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0026-2010 as described herein with the following conditions:

1. Master Plan: This SUP shall permit: (1) the construction of an approximately 19,000-square-foot, one-story retail store building (the "Store") on the property located at 7508 Richmond Road and also identified as James City County Real Estate Tax Map Parcel No. 2320100071 (the "Property") along with a fenced outdoor sales area to the east of the Store equal to or less than 15,000 square feet, an outdoor equipment display area immediately in front of the Store equal to or less than 3,200 square feet, and a 3,000-square-foot permanent trailer and equipment display area as shown on the plan; and (2) the sales of vehicles and trailers on the Property. For the purposes of this SUP: (1) "vehicles" shall be limited to those typically associated with agricultural or landscape use (e.g., all terrain vehicles (ATVs), bobcats, tractors, etc.) and shall specifically exclude cars, trucks, or recreational vehicles (RVs); and (2) "trailers" shall be limited to those typically associated with agricultural or landscape use (e.g., landscape, open or enclosed utility trailers) and shall specifically exclude manufactured homes, office trailers, or tractor/trailer rigs. Development and use of the Property shall be generally in accordance with and bound by the Master Plan entitled "Tractor Supply Company 19,000 S.F. Retail Norge Center," prepared by AES Consulting Engineers date stamped September 20, 2010 (the "Master Plan") with such minor changes as the Development Review Committee determines does not change the basic concept or character of the development.
2. Water Conservation: The Owner shall be responsible for developing and enforcing water conservation standards to be submitted to and approved by the James City Service Authority prior to final site plan approval. The standards may include, but shall not be limited to such water conservation measures as limitations on the installation and use of

irrigations systems and irrigations wells, the use of approved landscaping materials including the use of drought tolerant plants, warm season grasses, and the use of water conserving fixtures and appliances to promote water conservation and minimize the use of public water resources.

3. Shared Access Easement(s): Prior to final site plan approval for the Store, the applicant shall demonstrate to the satisfaction of the County Attorney that shared access easement(s) have been obtained and recorded, as applicable, allowing vehicular access to the Property via the private roadways shown on the plan as the Shared Access Drive from Norge Lane and the Shared Entrance from Richmond Road.
4. Low Impact Development: If the site completely drains to the York River, Special Stormwater Criteria requirements will not apply. If it is determined by the Environmental Director that stormwater is draining to the Yarmouth Creek because of the engineered drainage pattern, Special Stormwater Criteria will apply to the area which drains into the Yarmouth Creek. Low Impact Development (“LID”) techniques shall be used such that the total extent of the LID on the Property shall achieve a minimum of two unit measures as defined by *Special Stormwater Criteria in James City County* (adopted December 14, 2004). The proposed LID techniques to be implemented shall be approved by the Environmental Director prior to site plan approval. All approved LID techniques shall be constructed on the Property prior to the release of the posted erosion and sediment control surety.
5. Architectural Review: Prior to final site plan approval, the Director of Planning, or his designee, shall review and approve the final building elevations, architectural design, colors, and materials for the Store, each of which shall be consistent, as determined by the Director of Planning or his designee, with the architectural elevations titled “James City County Elevations” and dated November 18, 2010, submitted with this SUP application and prepared by Oxford Architecture.
6. Fencing: The fencing used to enclose the “Fenced Outdoor Sales Area” shall be vinyl-coated and shall be dark green or black in color and all fencing facing Route 60 shall be dark green or black in color and shall be constructed of aluminum or a similar material. All fencing shall be reviewed and approved by the Director of Planning prior to final site plan approval.
7. Dumpsters: All dumpsters and heating and cooling units visible from any public street or adjoining property shall be screened with landscaping and/or fencing approved by the Director of Planning or his designee prior to final site plan approval.
8. Outdoor Display Areas: Vehicles, equipment, or garden materials for sale on the Property shall only be displayed in those areas specifically indicated on the Master Plan as “Permanent Trailer and Equipment Display Areas,” “Permanent Sidewalk Display Area,” or “Fenced Outdoor Sales Area.”
9. Commencement of Construction: If construction has not commenced on this project within 36 months from the issuance of an SUP, the SUP shall become void. Construction shall be defined as obtaining permits for building construction and footings and/or foundation has passed required inspections.

10. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

3. Case No. SUP-0025-2010. Colonial Towne Plaza Flea Market

Ms. Sarah Propst, Planner, stated that Mr. Tim Trant has applied for an SUP to allow for the operation of a flea market at 6925 Richmond Road. The flea market intends to operate in the parking lot and side yard of the Colonial Towne Plaza Antique Mall. The flea market would be allowed to have up to 35 vendors and would operate between the hours of 7 a.m. and 6 p.m. on Saturdays and Sundays. This proposed use is complementary to surrounding land uses.

At its meeting on December 1, 2010, the Planning Commission recommended approval of this SUP request by a vote of 7-0.

Staff recommended approval of this application with the conditions listed in the resolution.

Ms. Jones opened the Public Hearing.

1. Mr. Tim Trant, on behalf of the applicant, gave a brief overview of the operation of the Colonial Towne Plaza Flea Market at 6925 Richmond Road. He noted that the antique mall has been in operation since 1988 and the flea market would be a complementary use for that area. He stated that the SUP had expired unintentionally and upon being made aware of that, the applicant submitted a new application. He stated that the applicant is the owner and proprietor of the antique mall and the lease is contingent to the sale of the property, so the use would not extend to a new property owner. He stated that the flea market was a complement to the rural community in that area.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Kennedy made a motion to adopt the resolution.

Mr. McGlennon commended staff for discovering the expired SUP and the applicant for putting the use back into compliance. He stated that there should be a mechanism in place to discover outdated and noncompliant SUPs.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **RESOLUTION**

### **CASE NO. SUP-0025-2010. COLONIAL TOWNE PLAZA FLEA MARKET**

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a Special Use Permit (SUP) process; and

WHEREAS, Mr. Timothy O. Trant, II has applied on behalf of Kaufman and Canoles, P.C. for an SUP to allow for the operation of a flea market on a portion of a 25-acre parcel of land zoned B-1, General Business; and

WHEREAS, the proposed development is shown on a plan prepared by Kaufman and Canoles, P.C. dated September 24, 2010, (the “Master Plan”) and entitled “SUP-0025-2010, Colonial Towne Plaza Flea Market”; and

WHEREAS, the property is located at 6925 Richmond Road and can be further identified as James City County Real Estate Tax Map Parcel No. 2430100003 (the “Property”); and

WHEREAS, the Planning Commission, following its public hearing on December 1, 2010, voted 7-0 to recommend approval of this application; and

WHEREAS, the Board of Supervisors of James City County, Virginia, finds this use to be consistent with the 2009 Comprehensive Plan Use Map designation for this Property.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of SUP-0025-2010 as described herein with the following conditions:

1. Master Plan and Use: This SUP shall be valid for a year-round flea market and accessory uses thereto, operating between the hours of 7 a.m. and 6 p.m. on Saturdays and Sundays only, on that portion of the Colonial Towne Plaza site designated as the “Special Use Permit Area” on the aerial picture prepared by “Kaufman and Canoles, P.C.,” dated “September 24, 2010” and entitled “SUP-0025-2010 Colonial Towne Plaza Flea Market 6925 Richmond Road, Williamsburg, Virginia,” for a copy of which is in the SUP file. Minor changes may be permitted by the Planning Director, as long as they do not change the basic concept or character of the development and do not exceed 35 vendors.
2. Parking: No customer parking shall be allowed on any unpaved surface. All unpaved areas shall be flagged and labeled with “No Parking” on the weekend.
3. Landscaping: A landscape plan (the “Landscape Plan”) shall be submitted to the Planning Director or his designee for review and approval prior to site plan approval. The Landscape Plan shall show the existing hedgerow along the property frontage on Richmond Road and shall identify all plants and/or shrubs necessary to fill in portions of the hedge that are presently missing on the portion of the property north of Ware Lane. The replacement plants and/or shrubs shall be of the same species and size as the existing hedgerow. The landscaping shall be installed within six months of site plan approval.
4. Site Plan Approval: A site plan for the Flea Market shall be approved within one year of the date of issuance of the SUP or the SUP shall become void.
5. Fire Extinguishers: At least two fire extinguishers shall be provided on the site of the Flea Market during all hours of operation of the Flea Market.
6. Public Restrooms: The Lightfoot Antique Mall must be open to provide public restrooms during the hours of operation of the Flea Market.
7. Term of Validity: This SUP shall be valid for a period of 96 months from site plan approval.
8. Severance Clause: This SUP is not severable. Invalidation of any word, phrase, clause, sentence, or paragraph shall invalidate the remainder.

4. Case No. ZA-0002-2010. Zoning Administrator's Opinion Appeal - Chisel Run

Mr. Middaugh noted that this was an appeal of a narrow opinion by the Zoning Administrator. He indicated that the applicant was also in attendance. He stated there was a request from one of the homeowner associations in the area to defer the application. He recommended that the Board hear the staff presentation and then make a determination regarding the deferral if additional public comment was needed.

Ms. Melissa Brown, Zoning Administrator, stated that the applicant has appealed a Zoning Administrator's Opinion that there are two units remaining to be developed in Chisel Run. She reviewed the proffers for the case which limit the types of units to be built and the proffer which limits the number of living units to 239. She stated that a portion of the property was not rezoned. She displayed the area of the rezoning and the designated Parcels A and B, Chisel Run 1 and Chisel Run 2, respectively. She stated that in order to meet the dwelling unit requirement of four units per acre, the entire acreage of the property would be necessary; reducing the acreage would exceed the density requirement. She stated that the Zoning Administrator's opinion remains that there should be two dwelling units remaining to be built as indicated in the original rezoning.

Mr. Icenhour asked if the two dwelling units remaining could be built by-right.

Ms. Brown stated that there was an existing parcel remaining where the two units are intended to be built with a development plan. She stated that all ordinance and environmental requirements would need to be met, including Resource Protection Area (RPA) and James City Service Authority (JCSA) easements.

Mr. Goodson asked Mr. Rogers if the applicant could appeal to court if the opinion was upheld.

Mr. Rogers stated that the applicant could challenge the decision in court.

Ms. Jones opened the Public Hearing.

1. Mr. Vernon M. Geddy, III, on behalf of the applicant, Bush Development Corporation, stated that this was a narrow legal issue; it was not a typical land use issue. He stated that on November 16, 1983, the Board of Supervisors rezoned 45 of 60 acres of the property. He indicated that Section 1 of the development was partly, but not entirely, included in the rezoning. He stated that proffers clearly allow 239 units and reviewed the sequence of the Chisel Run development. He stated that the R-5 land consists of 200 units, Section 1 has 25 units. He stated that the proffer indicates that 14 units remain to be developed. He stated that the Proffer Administrator indicated that 14 units remained. He stated that the parcels specifically included the units in Section 1. He stated that he believed the Zoning Administrator was rewriting the voluntary proffer accepted by the Board, which was not allowed. He stated that the basis for the decision was the idea that Section 1 should be read as Parcel A. He stated that the adopted resolution for the rezoning references the staff memorandum, which was unusual. He referenced the Board meeting minutes related to traffic study recommendations which he believed was the reference to the staff report in the resolution rather than dwelling unit numbers. He stated the minutes do not qualify the acceptance of the proffers in any way. He stated that the R-5 ordinance allowed a density of 10 units per acre and that he believed the Board would not accept the proffers if the maximum number of units was not clear. He recommended denial of the resolution supporting the Zoning Administrator's opinion on this case.

Mr. Rogers stated that neither side was intending to rewrite the proffers. He stated that the interpretation would not rewrite the proffers. He stated an interpretation of the intent of the proffers goes before the Board of Supervisors. He stated that the question before the Board is the intent of the Board when the case was approved in 1983. He stated that the attorney's office has reviewed the case and fully supports the Zoning Administrator's opinion.

Mr. McGlennon asked what the permitted density was for this rezoning.

Mr. Geddy stated that he has not calculated that value.

Mr. McGlennon asked if the applicant was requesting four units per acre.

Mr. Geddy stated that was what was indicated in the staff memorandum.

Mr. McGlennon stated that four units per acre for 45 acres amounted to 180 units.

Mr. Geddy stated that a mistake may have been made, but the proffer with the limit on the number of units clearly stated 239 units.

Mr. McGlennon stated that the only way to reach 239 units is to incorporate 60 acres into the rezoning.

Mr. Geddy stated there was no ambiguity about the unit limit in this case.

2. Ms. Diane Race, 5401 Sasha Court, stated that she purchased her home largely because of the viewshed. She stated concern about protecting the tree barrier in the additional development. She stated she was unclear what types of units were proposed to be built. She asked the Board to consider the aesthetics and property values of current Chisel Run owners.

3. Mr. Scott Bowser, 5404 Mary Lane, stated his concern about increased traffic, trash, and noise due to additional units in the development. He commented on drainage issues in the development and asked for cooperation with the homeowners association on this matter. He stated that the viewshed was very important to residents in Chisel Run.

4. Ms. Jeanette Navia, 5312 Nicholas Court, asked for consideration of the wildlife habitat that would be impacted by additional development in the community. She commented that many homes in the area were up for sale and that additional houses did not need to be built.

5. Ms. Pamela Owen, 5402 Trudy Lane, commented that the proposed site for the additional units had steep slopes and noted current problems with drainage in the development. She commented on water runoff and erosion as a result of the additional development.

6. Ms. Janet Green, Executive Director, Habitat for Humanity, stated that her organization builds small, modest homes for low-income residents. She stated that the properties are cleared and developed in a responsible way, and no roads were proposed to be added to the area in question. She stated that the County lacked this kind of affordable housing and Habitat for Humanity allows those who work in the community to live there as well.

7. Mr. Jack Fowler, 109 Wilderness Lane, stated that quite often old development projects resurface with issues. He stated that a mechanism should be in place as part of a rezoning that puts a time limit on the maximum development. He stated that he supported affordable housing, but that was not the issue in this case. He commented that a comprehensive review should be done to determine the status of developments and review the state of construction.

Mr. Geddy stated that the density that would be achieved with an additional 14 units would be slightly above four units per acre.

As no one else wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. McGlennon made a motion to adopt the resolution upholding the Zoning Administrators opinion.

Mr. Icenhour stated his support for the resolution. He stated that when he evaluates the intention of the Board, he must review the resolution and the staff memorandum. He stated that the resolution references the proffers as detailed in the memorandum, and the memorandum clearly denotes 59.6 acres. He stated that he feels that the 239 units would apply to the entire 59.6 acres.

Ms. Jones stated that she supported the resolution. She stated that she was disappointed that the applicant did not reach out to the residents of Chisel Run. She stated that despite the viewshed on the property, there is a zoning designation. She stated that the impact on Chisel Run was not the question of this appeal.

Mr. Goodson stated that he was not able to consider the impacts on Chisel Run and stated his support for Habitat for Humanity, but that he did not see a very complete or clear reason to overturn the Zoning Administrator's opinion. He stated that this could move forward to the courts, but did not have concrete evidence that would require him to oppose the Zoning Administrator's opinion.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **RESOLUTION**

### **CASE NO. ZA-0002-2010. ZONING ADMINISTRATOR'S OPINION APPEAL - CHISEL RUN**

WHEREAS, Mr. Vernon Geddy, appellant on behalf of the property owners (the "Appellant"), has appealed of the Zoning Administrator's interpretation and decision of the accepted proffers for the Chisel Run development to the Board of Zoning Appeals (the "BZA") and the Board of Supervisors; and

WHEREAS, the BZA voted unanimously in finding that the determination was an interpretation of a proffer and it had no jurisdiction to consider the appeal on November 4, 2010, and this BZA decision was not subsequently contested by the Appellant; and

WHEREAS, the Board of Supervisors, at its meeting on January 25, 2011, held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

WHEREAS, the Board of Supervisors is of the opinion that the determination of the Zoning Administrator is correct and that the Appellant's appeal should be denied.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby uphold the Zoning Administrator's interpretation and decision that the total remaining units to be constructed in the Chisel Run development is two, and in consideration of such determination, the Board of Supervisors makes the following specific findings of fact:

1. Section 15.2-2299 of the *Code of Virginia*, 1950, as amended (the "Virginia Code"), authorizes the Zoning Administrator to administer and enforce proffers attached to a rezoning. Section 15.2-2301 of the Virginia Code directs the Board of Supervisors to consider any appeal from a decision rendered pursuant to Section 15.2-2299 of the Virginia Code; accordingly, the Board of Supervisors has jurisdiction to hear this appeal.



2. The Board of Supervisors must give deference to the Zoning Administrator's determination.
  3. The Board of Supervisors approved rezoning case Z-10-83 by resolution on November 16, 1983, rezoning 45 of 60 acres from R-3 to R-5 and the adopted resolution for case Z-10-86, accepted voluntary proffers and referred to the Board of Supervisors Memorandum dated November 7, 1983 (the "Memorandum"), in reference to the interpretation of the proffers. The Board of Supervisors must, therefore, consider the Memorandum when interpreting the proffers.
  4. Proffer No. 2 states that "the total number of living units that may be constructed on the subject property shall not exceed Two Hundred Thirty-Nine units (239). This includes all living units to be construction in Section One (1) of Old Town Farms presently before the James City County Site Plan Review Committee and which is an area not under consideration for rezoning but that the said number of units shall be considered as part of a total 239 units to be construction on the subject property."
  5. The subject property referred in the adopted November 16, 1983, resolution and accepted proffers is Parcel B as shown on "Plat For Rezoning Parcel "B" Old Town Farms, Inc."
  6. The Board of Supervisors Memorandum dated November 7, 1983, states "the second proffer limits the total number of dwelling units to be construction on the property 239. This total includes the single family section of the property which will remain in the R-3 zoning district."
  7. The Board of Supervisors Memorandum dated November 7, 1983, states "the second proffer provides a total development density which is equal to that which could be obtained in the R-3 district and provides an overall density of four units an acre which is the upper limit of low density residential as designated by the Comprehensive Plan."
  8. The unit count per County records as of the date of this resolution are as follows:  
Section 1 – 25 units; Section 2 – 12 units; Section 3A – 18 units; Section 3B – 60 units;  
Section 4 – 122 units.
  9. The calculation of density of four units per acre included all sections of Chisel Run and Sections 1 and 2 of Olde Town Farms as shown as Parcel A on the document titled "Plat For Rezoning Parcel "B" Old Town Farms, Inc."
  10. The total number of remaining units to be constructed in the Chisel Run development is two.
5. Ordinance Amendment, Section 2-11.1, Disclosures of Financial Interest - General Services Manager

Mr. Rogers stated that this ordinance would require the General Services Manager to file a State of Economic Interests form like other department managers. He stated that the General Services Manager currently files these forms and this ordinance update was just a housekeeping matter. He recommended adoption of the ordinance.

Mr. Goodson stated that he understood that the necessity for this action was that this position was added slightly after the policy was established requiring department managers to file this paperwork.

Mr. Rogers stated that was correct. He stated the County's charter was changed several years ago to reflect this position, and this ordinance should have come before the Board previously.

Ms. Jones opened the Public Hearing.

As no one wished to speak to this matter, Ms. Jones closed the Public Hearing.

Mr. Icenhour made a motion to adopt the ordinance.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **H. BOARD CONSIDERATIONS**

### **1. Contract Award - Freedom Park Interpretive Center - \$1,269,500**

Mr. Bernie Farmer, Capital Projects Manager, stated that the resolution would approve the contract award for the Freedom Park Interpretive Center. He stated that this project was part of the bond referendum from 2005. He stated the building was approximately 3,000 square feet which was intended to display artifacts and history of Freedom Park, along with meeting space and programming area. He stated there would also be rest room facilities which was currently lacking at the site. He stated that about four acres of land would be cleared for the project and 54 parking spaces including bus parking would be included. He stated that pervious pavement was incorporated along with other stormwater features. He stated that David A. Nice Builders, Inc., a local builder, was the low bidder and believed the cost was competitive in the current market. He recommended approval of the resolution.

Mr. McGlennon stated that this item was discussed at the work session earlier in the evening and felt his questions were satisfied at that time.

Ms. Jones stated that she has not changed her opinion on this expenditure; she stated concern with the timing of the project. She stated that she understood it was part of the referendum, but hoped to wait a year due to the economic climate.

Mr. Kennedy stated that he understood Ms. Jones's viewpoint. He stated that the bond money is already being serviced. He stated that he would not support this resolution because he believed there were other facilities such as Mid County Park where the funds could be better utilized. He stated support for the project, but felt other projects were a higher priority. He stated that he understood this was part of a referendum, but that he was not part of the Board at that time.

Mr. Goodson stated that he was on the Board at the time of the referendum and this project was specifically advertised as part of the bond funding. He stated that some voters supported the referendum specifically for this project. He stated that the construction climate was favorable, the funds have been borrowed for this project, the project would be completed anyway, and he supported the resolution. He stated that he understood Mid County Park was more utilized and had a greater need, but supported the resolution as a reflection of the commitment to the community that supported the project.

Mr. McGlennon made a motion to adopt the resolution.

On a roll call vote, the vote was: AYE: Goodson, McGlennon, Icenhour (3). NAY: Kennedy, Jones (2).

## **RESOLUTION**

### **CONTRACT AWARD – FREEDOM PARK INTERPRETIVE CENTER - \$1,269,500**

WHEREAS, an interpretive center has been planned as part of the Master Plan for Freedom Park; and

WHEREAS, funds are available from the Parks and Recreation Bond Referendum accounts; and

WHEREAS, seven bids were considered for award and David A. Nice Builders, Inc. was the lowest responsive and responsible bidder.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby awards the contract in the amount of \$1,269,500 for the Freedom Park Interpretive Center to David A. Nice Builders, Inc.

### **2. Ratification of the Forest Heights Community Development Block Grant Agreement**

Mr. Middaugh stated this was a ratification of a change to the recently approved Forest Heights Community Development Block Grant (CDGB) Grant. The Department of Housing and Urban Development (DHUD) has asked the County to accept the funds in the amount of \$1.4 million in one sum rather than in two separate installments. He stated the project remains the same, but the project timeline would be expedited as a result of the increased upfront funding.

Mr. Icenhour made a motion to adopt the resolution.

Mr. Goodson noted that this project had a very aggressive schedule as a result of this change.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

## **RESOLUTION**

### **RATIFICATION OF FOREST HEIGHTS COMMUNITY DEVELOPMENT**

### **BLOCK GRANT (CDBG) AGREEMENT AND APPROPRIATION OF FUNDS**

WHEREAS, the Board of Supervisors authorized by resolution on December 14, 2010, the County Administrator to sign the Forest Heights Community Development Block Grant (CDBG) Agreement and Phase One Contract with the Virginia Department of Housing and Community Development; and

WHEREAS, the Virginia Department of Housing and Community Development notified the County in January 2011, that it was revising the terms of the 2010 Virginia CDBG offer to provide the entire \$1,400,000 award of CDBG funds under a single, 24-month contract instead of the original offer of \$800,000 of CDBG funds to complete the first phase of project activities with an additional \$600,000 of CDBG funds conditioned on successful progress to be provided under a second contract to complete the remainder of the Forest Heights Neighborhood Improvement Project activities; and

WHEREAS, the acceptance of this revised CDBG grant offer will expedite completion of the Forest Heights Neighborhood Improvement Project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby ratifies and confirms the Agreement, Contract CIG No. 10-15, dated January 12, 2011, executed by the County Administrator, which provides \$1,400,000 to assist in funding the Forest Heights Neighborhood Improvement Project.

BE IT FURTHER RESOLVED that the Board of Supervisors of James City County, Virginia, hereby amends the Budget, as adopted for the fiscal year ending June 30, 2011, as follows:

Revenue:

Forest Heights Neighborhood Improvement Project	
Community Development Block Grant	<u>\$600,000</u>

Expenditure:

Forest Heights Project CDBG	<u>\$600,000</u>
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BE IT FURTHER RESOLVED that the appropriation of funds for the Forest Heights CDBG Project be designated a continuing appropriation to carry beyond FY 2011 until the Forest Heights Project is completed.

**I. PUBLIC COMMENT**

1. Mr. Ed Oyer, 139 Indian Circle, commented on the Chisel Run appeal and noted that in 1973, he evaluated the property in question. He stated that the topography of the property was a reason that he and his family did not consider buying the property.

2. Mr. Jack Fowler, 109 Wilderness Lane, stated that he supported the Freedom Park Contract Award. He stated that he supported the referendum and the mission of the facility. He commented on the improvements needed at Little Creek Reservoir Park that have not been addressed. He commented on the need to decrease pollution and that the County needed to act to protect the environment.

**J. REPORTS OF THE COUNTY ADMINISTRATOR - None**

**K. BOARD REQUESTS AND DIRECTIVES – None**

**L. ADJOURNMENT to 10 a.m. on February 3, 2011.**

Mr. Goodson made a motion to adjourn.

On a roll call vote, the vote was: AYE: Kennedy, Goodson, McGlennon, Icenhour, Jones (5). NAY: (0).

At 8:50 p.m., Ms. Jones adjourned the Board until 10 a.m. on February 3, 2011.

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Robert C. Middaugh  
Clerk to the Board

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